IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 507 of 2003

Shri Suresh Narahar Kulkarni ..Appellant

V/s

Gunadhar Nana Pachore ..Respondent

Shri P.R.Arjunwadkar for Appellant

CORAM:S.R.SATHE,J.

DATED:24th June 2005

P.C.:-

. Heard the learned Advocate for the appellant.

. The plaintiff had filed suit for permanent injunction restraining defendant from obstructing plaintiff's possession of the suit property. Admittedly the properties of the plaintiff and the defendant are adjoining to each other and there is open space in between the two properties. The dispute is with regard to the portion where the defendant has prepared a dung pit. Whether that portion falls part and parcel of the property owned by the plaintiff or not, is the question. Naturally

it was necessary for the plaintiff to adduce cogent evidence in that behalf. In such type of suit it was necessary for the plaintiff to give exact measurement of the open space, but that was not done. Nor boundaries of the said portion were given. On the material available on record and particularly on the basis of Commissioner's report, prepared in some other matter between the same parties, in respect of the suit property, the trial Court held that open space in question is out of defendants property and dismissed the suit. This finding of fact recorded by the trial court has been confirmed by the first Appellate Court. There is nothing to indicate that appreciation of evidence is faulty or perverse.

. No substantial question of law is involved in the present appeal. The appeal is dismissed in limine.

(S.R.SATHE,J.)